

## § 294.110

paid within 30 days, and that OPM will not further process the request until it receives payment.

(2) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be charged at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

(3) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Public Law 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

[58 FR 32044, June 8, 1993]

## § 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the—

Deputy Director, Office of Personnel Management Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency

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records are situated, or in the District of Columbia.

## § 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

(b) See 5 CFR part 297, subpart D—Disclosure of Records, of this title, for the steps other officials should take on receipt of a subpoena or other judicial order for an Office record.

[54 FR 25094, June 13, 1989, as amended at 57 FR 32150, July 21, 1992]

## § 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order 12600, apply to this section:

(1) *Confidential commercial information* means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification

for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter a reasonable period from the date of the notice to provide OPM with

a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specification shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm, that would result from disclosure. Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice, which shall include:

(1) A statement of the reasons why the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

## § 294.201

(k) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

[57 FR 32150, July 21, 1992]

### Subpart B—The Public Information Function

#### § 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

[50 FR 3310, Jan. 24, 1985]

### Subpart C—Office Operations

#### § 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the FEDERAL REGISTER, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

[50 FR 3310, Jan. 24, 1985, as amended at 66 FR 66710, Dec. 27, 2001]

### Subpart D—Cross References

#### § 294.401 References.

The table below provides assistance in locating other OPM regulations in title 5 of the Code of Federal Regula-

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tions that have provisions on the disclosure of records:

Type of information	Location
Classification appeal records .....	511.616.
Classification information .....	175.101.
Employee performance folders .....	293.311.
Examination and related subjects records.	300.201.
Grade and pay retention records .....	536.405.
Investigative records .....	736.104.
Job grading reviews and appeals records.	532.707.
Medical information .....	297.205 and 293 subpart E.
Official Personnel Folders .....	293.311.
Privacy and personnel records .....	297.
Retirement .....	831.106 and 841.108.

[54 FR 25098, June 13, 1989, as amended at 58 FR 32046, June 8, 1993; 70 FR 31286, May 31, 2005]

## PART 295—TESTIMONY BY OPM EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

### Subpart A—General Provisions

Sec.  
295.101 Scope and purpose.  
295.102 Applicability.  
295.103 Definitions.

### Subpart B—Requests for Testimony and Production of Documents

295.201 General prohibition  
295.202 Factors OPM will consider.  
295.203 Filing requirements for demands or requests for documents or testimony.  
295.204 Service of subpoenas or requests.  
295.205 Processing demands or requests.  
295.206 Final determination.  
295.207 Restrictions that apply to testimony.  
295.208 Restrictions that apply to released records.  
295.209 Procedure when a decision is not made prior to the time a response is required.  
295.210 Procedure in the event of an adverse ruling.

### Subpart C—Schedule of Fees

295.301 Fees.

### Subpart D—Penalties

295.401 Penalties.

AUTHORITY: 5 U.S.C. App. (Sec. 1103, Civil Service Reform Act of 1978; 31 U.S.C. 9701).